

This Opinion is not a  
Precedent of the TTAB

Mailed: August 24, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re DRiV Automotive, Inc.*<sup>1</sup>  
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Serial No. 87720124  
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Shannon K. Smith of Reising Ethington P.C.,  
for DRiV Automotive, Inc.

Jamilla Galloway, Trademark Examining Attorney, Law Office 121,  
Richard White, Managing Attorney.

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Before Bergsman, Goodman and Elgin,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

DRiV Automotive, Inc. (“Applicant”) seeks registration on the Principal Register of the mark X-LANDER (in standard characters) for “Aftermarket shock absorbers for vehicles” in International Class 12.<sup>2</sup>

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<sup>1</sup> By way of assignment, from Tenneco Automotive Operating Company Inc., recorded in the Office’s Assignment Branch at Reel/Frame 8068/0463 on May 11, 2023. The ownership information has not updated automatically in the Office’s database and in such a case, Applicant must notify the Trademark Operation of the change in ownership. *See* Trademark Manual of Examining Procedure (TMEP) § 505 (July 2022).

<sup>2</sup> Application Serial No. 87720124 was filed on December 13, 2017 based upon Applicant’s assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the basis of likelihood of confusion with the Principal Register mark LANDER (standard characters)<sup>3</sup> for the following International Class 12 goods:

Motor land vehicles; parts and fittings for vehicles, namely, structural parts for land vehicles; engines for motor land vehicles; wheels for vehicles; alloy wheels; trim for motor vehicle wheels; wheel rims; hub caps for wheels; hub center caps, namely, hub caps for vehicle wheel centers; wheel covers; wheel sprockets; arm rests for vehicle seats; luggage bags specially adapted for fitting in the boot of vehicles; car interior organizer bags, nets and trays specially adapted for fitting in vehicles; head-rests for vehicle seats; vehicle head rest covers; auto accessories, namely, side mirror protective and vanity covers; fitted car seat covers; covers for vehicle steering wheels; fitted covers for vehicles; spoilers for vehicles; seats for vehicles; seat safety harnesses; radiator grilles for vehicles; motor vehicle parts, namely, metal panels for use as protective and decorative trim; baby, infant and child seats for vehicles; anti-theft alarms for vehicles; electronic interface panels sold as an integral component of land vehicles; diagnostic apparatus consisting of sensors for use in testing vehicle function and in diagnosing vehicle electrical and mechanical problems sold as an integral component of land vehicles; not including motorcycles or their parts.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We reverse the refusal to register.

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Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's brief is at 6 TTABVUE and its reply brief is at 9 TTABVUE; the Examining Attorney's brief is at 8 TTABVUE.

<sup>3</sup> Registration No. 6082630 issued June 23, 2020 under Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e).

## I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, or to cause mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at \*2 (TTAB 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and others, are discussed below.

A. Strength of the Registered Mark

We consider Applicant's contention that LANDER marks are weak such that its applied-for mark can coexist with the cited registration. 6 TTABVUE 10-11.

“A mark's strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).” *In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010). In determining the strength of the cited mark, we consider inherent strength, based on the nature of the mark itself.<sup>4</sup> *New Era Cap. Co. v. Pro Era LLC*, 2020 USPQ2d 10596, at \*10 (TTAB 2020); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength). In tandem, if there is evidence in the record, we consider whether the mark has commercial weakness in the marketplace. *DuPont*, 177 USPQ at 567 (the sixth *DuPont* factor considers “the number and nature of similar marks in use on similar goods.”).

To determine the conceptual strength of the cited mark, we evaluate its intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary-fanciful continuum of words. *See generally, Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000) (word marks registered without a claim of acquired distinctiveness that are arbitrary, fanciful or suggestive are “held

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<sup>4</sup> The owner of the cited LANDER registration is not a party to this proceeding and thus cannot introduce evidence regarding its commercial use or marketplace strength. *See In re Thomas*, 79 USPQ2d 1021, 1027, n.11 (TTAB 2006) (“Because this is an ex parte proceeding, we would not expect the examining attorney to submit evidence of fame of the cited mark.”). As a result, the commercial strength of Registrant's mark simply is not at issue in this appeal.

to be inherently distinctive.”); *In re MBNA Am. Bank, N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (citing *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 23 USPQ2d 1081, 1083 (1992)). We may consider dictionary definitions in connection with determining the conceptual strength of a mark. *See In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1673 (TTAB 2018) (considering dictionary definition of “smoking hot” in relation to identified goods, cosmetics, for purposes of determining conceptual strength of the mark and finding the term highly suggestive as it indicates the purpose or intended result of the goods); *In re Azteca Rest. Enters. Inc.*, 50 USPQ2d 1209, 1212 (TTAB 1999) (suggestiveness of Azteca established by dictionary definition and further confirmed by third-party registrations); *see also Hancock v. Am. Steel & Wire Co. of N.J.*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) (dictionary definitions considered “to determine the ordinary significance and meanings of words.”).

We note that the cited LANDER mark is inherently distinctive because it registered on the Principal Register without a claim of acquired distinctiveness. *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006) (a “mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods”). Nonetheless, we may consider whether an inherently distinctive mark is “weak as a source indicator” in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517-18 (TTAB 2016); *see also In re Guild Mortg. Co.*,

2020 USPQ2d 10279, at \*3 (TTAB 2020) (“an analysis of the similarity between marks may include an analysis of the conceptual strength or weakness of the component terms and of the cited mark as a whole”).

In connection with evaluating the cited mark’s conceptual strength, active third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or so commonly used in a particular industry that the public will look to other elements to distinguish the source of the goods. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015); *see also Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (“[E]vidence of third-party registrations is relevant to ‘show the sense in which . . . a mark is used in ordinary parlance.’”); *In re Guild Mortg. Co.*, 2020 USPQ2d 10279, at \*3 (same); *In re Dayco Prods. Eaglemotive Inc.*, 9 USPQ2d 1910, 1911-12 (TTAB 1988); *EZ Loader Boat Trailers, Inc. v. Cox Trailers, Inc.*, 213 USPQ 597, 601 (TTAB 1982).

Thus, third-party registrations can be used in the manner of dictionary definitions to show that a term has some significance in a particular field. *See Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (even if “there is no evidence of actual use” of third-party registrations, such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983); *see also Juice Generation,*

115 USPQ2d at 1675 (the “real evidentiary value of third party *registrations* per se is to show the sense in which ... a mark is used in ordinary parlance.”) (quoting 2 McCarthy on Trademarks and Unfair Competition § 11:90 (4<sup>th</sup> ed. 2015)) (emphasis in original).

Applicant made of record eleven third-party registrations for LANDER formative marks. Feb. 11, 2022 Response to Office action at TSDR 2-30. Applicant also provided two expired registrations for XLANDER owned by the same entity.<sup>5</sup> Feb. 11, 2022 Response to Office action at TSDR 31-34. Expired registrations, however, have no probative value. *See TiVo Brands LLC v. Tivoli, LLC*, 129 USPQ2d 1097, 1116 (TTAB 2018) (“A cancelled or expired registration is ‘only evidence that the registration

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<sup>5</sup> Applicant provides arguments relating to Registrant’s statements against interest in the application that LANDER is weak, which occurred during examination when the expired XLANDER registrations were cited against it. 6 TTABVUE 12-13; 9 TTABVUE 3-4. There are two problems with Applicant’s position. First, although Registrant’s argument during ex parte prosecution is neither an “admission” nor a substitute for the Board reaching its own ultimate conclusion as to likelihood of confusion in this appeal, Registrant’s prior contention is a fact “illuminative of shade and tone in the total picture confronting the decision maker.” *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151, 154 (CCPA 1978); *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) (discussing the impact of the opposer’s statements during prosecution of the application that matured into its registration of LION CAPITAL, distinguishing its mark from the cited mark ROARING LION, on the opposer’s likelihood of confusion claim against the applicant’s STONE LION CAPITAL mark); *Stabilisierungsfonds fur Wein v. Zimmermann-Graeff KG*, 209 USPQ 434, 436 (TTAB 1980) (finding opposer’s contrary opinions in prosecution while opposition was pending “strongly illuminate the shade and tone of the total picture”).

Second, Applicant did not submit the registration file into the record. We do not take judicial notice of the registration file because the Board does not take judicial notice of records residing within the USPTO. *See In re Wada*, 48 USPQ2d 1689 n.2 (TTAB 1998), *aff’d* 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999); *In re Carolina Apparel*, 48 USPQ2d 1542 n.2 (TTAB 1998); *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1978). In view of these deficiencies, we are not persuaded by Applicant’s arguments.

issued and does not afford . . . any legal presumptions under [Section] 7(b).”) (citation omitted). The subsisting registrations are shown in the following table:

Reg. No.	Mark	Goods/Services	Owner
Reg. No. 6620757	GOLANDER	For goods that include: Automotive measuring instruments, namely, water temperature gauges, air fuel/ratio gauges, boost gauges, vacuum gauges and exhaust gas temperature gauges; humidity sensor with integrated digital and analog output circuitry used in automotive applications to sense relative humidity and temperature environmental conditions in International Class 9	Golander LLC
Reg. No. 6264609	MAXLANDER	For goods that include: Chain saws; electric generators; lawn mowers; power-operated tools, namely, drill hammers; power drills; power tillers; screwdrivers, electric; welding machines in	Zhejiang Safun Industrial Co., Ltd.

Reg. No.	Mark	Goods/Services	Owner
		International Class 7	
Reg. No. 5924382		For services that include: Organizing, sanctioning, and conducting motorsports racing events; motorsports racing events and exhibitions; arranging, production, sanctioning and conducting of off-road racing, events and production of sports rallies and competitions featuring cars, 4x4s, Motorcycles, ATVs, UTVs, and other motorized vehicles in International Class 41	Luis A. Vassallo,
Reg. No. 6617512	BUSHLANDER	For goods that include: Trailers in International Class 12	Woodland Mills Inc.
Reg. No. 5952076 <sup>6</sup>	OVERLANDER	Motorhomes in International Class 12	Adventurer Mfg. Limited Partnership
Reg. No. 6176716	TYGER LANDER	Vehicle Running Boards in International Class 12	Tyger Auto Inc.
Reg. No. 6120651	OVERLANDER M/T	Tires in International Class 12	Rough Country, LLC

<sup>6</sup> This mark registered on the Supplemental Register.

Reg. No.	Mark	Goods/Services	Owner
Reg. No. 1933724	BADLANDER	Motorcycle seats and parts therefor in International Class 12	Harley-Davidson Motor Company, Inc.
Reg. No. 2729375	OUTLANDER	Automobiles and structural parts thereof in International Class 12	Mitsubishi Motors Corporation
Reg. No. 3346577	LOWLANDER	Land vehicle engines and transmissions for manure spreaders and slurry tankers; replacement parts for land vehicle transmissions, manure spreaders and slurry tankers in International Class 12	G.T. Bunning & Sons Limited
Reg. No. 3346578	LOWLANDER WIDEBODY	Land vehicle engines and transmissions for manure spreaders and slurry tankers; replacement parts for land vehicle transmissions, manure spreaders and slurry tankers in International Class 12	G.T. Bunning & Sons Limited

The Examining Attorney argues that many of the goods and services listed in the third-party registrations are “predominantly different” and not relevant, referencing the third-party registrations for motorcycle parts, trailers, automotive measuring instruments, agricultural machines, motorhomes and entertainment services.

8 TTABVUE 12. While we agree that two of the registrations (OVER LANDERS EXPERIENCE and design for entertainment services and MAXLANDER for chain saws/lawnmowers/power tools etc.) are not similar services/goods, we find the remaining nine registrations (GOLANDER, BUSHLANDER, OVERLANDER, TYGER LANDER, OVERLANDER M/T, BADLANDER, OUTLANDER, LOWLANDER and LOWLANDER WIDEBODY) for either land vehicles or land vehicle parts, or for automotive vehicles and automotive parts, are similar or related to Registrant's motor land vehicles, parts and accessories. Therefore, these registrations are probative of the conceptual weakness of LANDER in the industry.<sup>7</sup>

The Examining Attorney also argues that the remaining registrations related to automotive vehicles or their parts have different commercial impressions than Registrant's mark when considering the marks as a whole. 8 TTABVUE 5.

However, we find the commercial impression of the term LANDER in these nine registrations similar. We take judicial notice that "land is defined as "a : the solid part of the surface of the earth" and "b : ground or soil of a specified situation, nature, or quality |dry land," that "er" is a "noun suffix" that means "person or thing belonging to or associated with," and that "lander" is defined as " : one that lands *especially* : a space vehicle that is designed to land on a celestial body (such as the

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<sup>7</sup> These goods appear similar or related on their face. As indicated in the table, the LOWLANDER and LOWLANDER WIDEBODY registrations are owned by the same entity. As to Registrant's goods, it specifically excluded motorcycle parts.

moon or a planet).”<sup>8</sup> Although additional modifying terms or prefixes are added to LANDER in these third-party registrations (e.g., GO, OUT, OVER, LOW, BAD), the LANDER portion of these marks still suggests a vehicle and/or parts for a vehicle associated to or with the land (land vehicle).<sup>9</sup> Similarly, in the cited mark, the term LANDER also suggests a land vehicle or parts associated to or with a land vehicle.

Therefore, the LANDER portions of the third-party registrations have the same connotation and the same commercial impression as the cited mark LANDER. *See e.g., BAF Indus. v. Pro-Specialties, Inc.*, 206 USPQ 166, 175 (TTAB 1980) (Third-party registrations evidence that “PRO” is popular term as a trademark or a portion of a mark and that “PRO” is weak as it has a laudatory connotation as applied to most products and services indicating that they are utilized by professionals or are of professional quality); *In re Sien Equip. Co.*, 189 USPQ 586, 588 (TTAB 1975) (the suggestive meaning of the word “Brute” explains the numerous third-party registrations incorporating that word with other wording or material no matter how little additional significance they may add to the word “Brute” per se).

The third-party registration evidence along with the dictionary definitions show that LANDER has a highly suggestive significance in connection with land vehicles and their parts and is probative of conceptual weakness of the term in the industry.

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<sup>8</sup> MERRIAM-WEBSTER DICTIONARY (merriam-webster.com accessed Aug. 14, 2023). *See In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 n.23 (TTAB 2013) (the Board may take judicial notice of online dictionaries that exist in printed format or have regular fixed editions).

<sup>9</sup> Two of the listed marks comprise or include the term OVERLANDER. The definition of “overlander,” is “one that travels overland.” MERRIAM-WEBSTER DICTIONARY (merriam-webster.com accessed Aug. 14, 2023).

*Juice Generation*, 115 USPQ2d at 1674 (“The weaker [a registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.”); *Sure-Fit Prods. Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958) (“Where a party uses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights.”).

Finally, Applicant submitted evidence of Lander Automotive, a United Kingdom company that offers assembled automotive parts with “global outreach” as evidence of LANDER in the marketplace.<sup>10</sup> Applicant also argues that the “many other marks coexisting on the register that use the term LANDER in the context of vehicles” “evidences extensive use of LANDER in the marketplace.” 6 TTABVUE 16. However, Applicant has offered no evidence of actual use of the third-party registered marks, so we find insufficient evidence in the record as to marketplace weakness.

Given the conceptual weakness of LANDER, we find the cited mark is entitled to a narrow scope of protection. *See In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1154 (TTAB 2012) (“GRAND HOTEL is highly suggestive, and therefore the scope of protection to which the cited registration is entitled is quite limited.”); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1533 (TTAB 1994) (“the descriptiveness or suggestiveness of a mark or portion of a mark may result in what is sometimes termed a more narrow scope of protection”); *Plus Prods. v. Nat. Organics, Inc.*, 204 USPQ

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<sup>10</sup> Although this is a foreign company, the webpages also indicate it is a global company, and we find this evidence relevant because this company’s goods could be offered in the United States. Feb. 11, 2022 Response to Office action at TSDR 2-9.

773, 779 (TTAB 1979) (the existence of eight third-party registrations all for marks containing the word PLUS and all for goods that are the same or closely related to vitamins allowed for an inference that marks can coexist on the register provided there is some difference and allowed for an inference that trademark owners believe the PLUS marks can be registered side by side with minimal differences).

B. Similarity or Dissimilarity of the Marks

Keeping mind that the term “LANDER” is entitled only to a narrow scope of protection, we now turn to the first *DuPont* factor which considers the similarity or dissimilarity of the marks. *DuPont*, 177 USPQ at 567. Our analysis of Applicant’s mark and the cited mark cannot be predicated on dissecting the marks into their various components; the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant’s mark is X-LANDER and Registrant’s mark is LANDER.

Both marks are in standard characters which means that the marks can be depicted in any font style, size, or color. Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a). Therefore, Applicant’s mark could be presented in the same font style, size, and color as the cited mark. *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (“[T]he rights associated with a standard character mark reside in the wording per se and not in any particular font style, size, or color.”) (citation omitted).

Although Applicant’s mark includes the letter “X-” prefix, the marks are visually similar in appearance, due to the shared element LANDER. As to sound, although there is no correct pronunciation of a trademark that is not a recognized word,

Applicant's mark likely will be pronounced as "Ex-Lander" which is a slight difference in sound. *See StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014) ("There is no correct pronunciation of a trademark that is not a recognized word." "Where a trademark is not a recognized word and the weight of the evidence suggests that potential consumers would pronounce the mark in a particular way, it is error for the Board to ignore this evidence entirely and supply its own pronunciation.") (citation omitted). Thus, when pronounced, the marks will sound similar due to the shared element LANDER.

Such slight differences in marks normally do not create dissimilar marks. *See e.g., Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1741 (TTAB 2014) (AKEA is similar to IKEA); *Interlego AG v. Abrams/Gentile Entm't Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002) ("Obviously, the marks LEGO and MEGO are extremely similar in that they differ simply by one letter."); *U.S. Mineral Prods. Co. v. GAF Corp.*, 197 USPQ 301, 306 (TTAB 1977) ("AF'CO' and 'CAF'CO,' which differ only as to the letter 'C' in USM's mark, are substantially similar in appearance and sound."). In this regard, consumers do not focus on minutia but rather overall impressions. *See In re John Scarne Games, Inc.*, 120 USPQ 315, 315-16 (TTAB 1959) ("Purchasers of game boards do not engage in trademark syllable counting — they are governed by general impressions made by appearance or sound, or both.").

Applicant argues that "X" may be perceived as a particular place, with 'LANDER' meaning to land, which is of particular operational reference to vehicle shock absorbers that generally control the vertical positioning of the vehicle." 6 TTABVUE

9. The Examining Attorney argues that the marks share the “distinctive wording LANDER” and that the addition of the letter “X-” does not change the overall impression of the mark. 8 TTABVUE 3.

We previously discussed the definitions for “lander,” “land,” and “er” and find that this portion of Applicant’s mark and the cited mark have a similar meaning. We take judicial notice that “X” in Applicant’s mark is subject to several different meanings including: the roman numeral number “ten”; an abbreviation for “cross, or an abbreviation for ““extra” or “ex.”<sup>11</sup> See *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (noting that the Board in its decision agreed that “the meaning of registrant’s mark X-seed is less clear” because the letter “x” is subject to a variety of meanings). The Examining Attorney argues that X represents something more “extreme” but as Applicant points out, we have no evidence in the record to support such meaning. 8 TTABVUE 3; 9 TTABVUE 2. Applicant submits that the letter “X” has a “distinct commercial impression” given the potential meanings of “X.” 9 TTABVUE 2-3. However, there is no evidence in the record supporting any meaning for the letter “X-” prefix in connection with the identified goods.

In this regard, it is likely that purchasers who notice the difference between LANDER and X-LANDER for related products will not necessarily perceive the goods as emanating from different sources, but will see the marks as variations of each other pointing to a single source. See, e.g., *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d

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<sup>11</sup> MERRIAM-WEBSTER DICTIONARY (merriam-webster.com accessed August 14, 2023). Definitions for “ex” as a prefix include “: out of : outside” (which can mean exceeding normal boundaries or going outside of them) and “: not” and “former.” *Id.*

1266, 1271 (TTAB 2009) (VANTAGE TITAN “more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices”); *Schieffelin & Co. v. Molson Cos., Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989) (“Those consumers who do recognize the differences in the marks may believe that applicant’s mark is a variation of opposer’s mark that opposer has adopted for use on a different product.”).

Although there is a slight difference in connotation in Applicant’s mark due to the addition of the letter “X-” prefix, we find the marks overall are somewhat similar in connotation and commercial impression due to the shared term LANDER as they both suggest a relationship with a vehicle that travels on land. *See e.g., In re Ass’n of the U.S. Army*, 85 USPQ2d 1264, 1269 (TTAB 2007) (while the word “association” adds a slight difference in connotation to applicant’s mark, “that slight difference in connotation does not suffice to overcome the obvious similarity in the connotations of the marks as a whole which results from the presence in each mark of the designation U.S. ARMY or its equivalent, UNITED STATES ARMY”; the marks also were found to have similar overall commercial impressions).

Although Applicant's mark contains the additional letter “X-” prefix, where, as here, Applicant’s mark subsumes the mark of the cited registration, this increases the similarity between the two. *See e.g., China Healthways Inst. Inc. v. Xiaoming Wang*, 491 F.3d 1337, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007) (applicant’s mark CHI PLUS is similar to opposer’s mark CHI both for electric massagers); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at \*6-7 (TTAB 2019) (respondent's

mark ROAD WARRIOR is similar to petitioner's mark WARRIOR); *Broadcasting Network Inc. v. ABS-CBN Int'l*, 84 USPQ2d 1560, 1568 (TTAB 2007) (respondent's mark ABS-CBN is similar to petitioner's mark CBN both for television broadcasting services).

In sum, when we compare the marks in their entirety, we find that they are more similar than dissimilar. Although we have found conceptual weakness to the term "LANDER" "even weak marks are entitled to protection against registration of similar marks for identical or similar [goods.]" See *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at \*3 (Fed. Cir. 2023) (citing cases).

The first *DuPont* factor weighs in favor of a finding of likelihood of confusion.

### C. Similarity or Dissimilarity of the Goods

We next consider the second *DuPont* factor, "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration." *DuPont*, 177 USPQ at 567. Our comparison is based on the goods as identified in Applicant's application and the cited registration. See *Stone Lion* 110 USPQ2d at 1162; *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (in reviewing the second *DuPont* factor, "we consider the applicant's goods as set forth in its application, and the opposer's goods as set forth in its registration.").

The issue is not whether purchasers would confuse Applicant's and Registrant's goods, but rather whether there is a likelihood of confusion as to the source of these goods. See *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one

another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1737 (TTAB 2018) (“[T]he test is not whether consumers would be likely to confuse these goods, but rather whether they would be likely to be confused as to their source.”); *In re Cook Med. Tech. LLC*, 105 USPQ2d 1377, 1380 (TTAB 2012); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989); *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984).

As Applicant points out, there is no rule that different types of goods for motor vehicles are per se related.<sup>12</sup> 6 TTABVUE 13. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“The Board must decide each case on its own merits.”); see also *H.D. Lee Co., Inc. v. Maidenform, Inc.*, 87 USPQ2d 1715, 1723 (TTAB 2008) (no per se rule that clothing products are per se related); *On-Cor Frozen Foods, Inc. v. Ralston Purina Co.*, 220 USPQ 567, 569 (TTAB 1983) (“[I]n view of the specific fact situations in the foregoing cases and keeping in mind that there is no per se rule regarding food items but that each case must be decided on its own facts”).

Applicant’s goods are “Aftermarket shock absorbers.” Registrant’s goods include “engines,” “structural parts for land vehicles” “wheels for vehicles; alloy wheels; wheel covers; “arm rests for vehicle seats,” “fitted car seat covers;” “covers for vehicle steering wheels;” and “fitted covers for vehicles.” We refer to these particular goods

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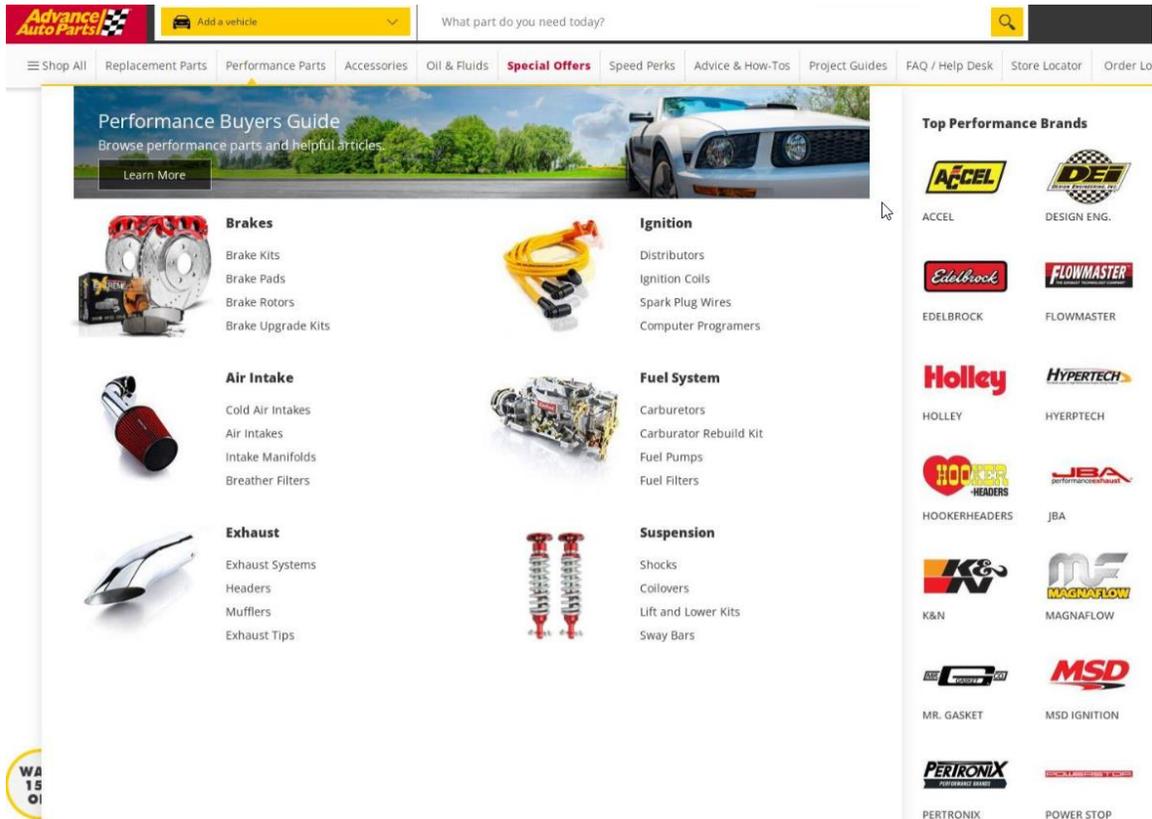
<sup>12</sup> Both the Examining Attorney and Applicant reference non-precedential Board cases. While these cases may be cited and considered for whatever persuasive value they may have, they are not binding on the Board. We find the cited cases unpersuasive because they are based on different records. See *In re tapio GmbH*, 2020 USPQ2d 11387, at \*10 n.30 (TTAB 2020) (“Generally, the practice of citing non-precedential opinions is not encouraged;” Board found unpersuasive non-precedential decision decided on different record).

in the cited registration because these are the goods that the Examining Attorney has identified in her brief as related in conjunction with the webpage evidence submitted during examination.

The particular relatedness evidence submitted by the Examining Attorney consists of web pages from various auto parts stores and websites (Napa Auto Parts, AutoZone, Advanced Auto Parts, CARiD, BAP Buy Auto Parts, CarParts.com, Parts Geek, and JEGS), purportedly to show that the same entity provides Applicant's goods and Registrant's goods under the same mark. *See* Sept. 28, 2021 Office action at TSDR 5-15; Mar. 11, 2022 Office action at TSDR 2-9; Nov. 15, 2022 Denial of reconsideration at TSDR 2-8. To the extent that the Examining Attorney broadly references "various vehicle parts" and "auto accessories" on these web pages as a basis for finding relatedness to aftermarket shock absorbers, we find this argument non-specific and lacking in evidentiary support.

Most of this webpage evidence consists merely of broad category listings that allow the consumer to link to specific webpages to see the actual product listings. The links to the motor vehicle accessories (generally shown either by photo and/or by generic name e.g., steering wheel covers, seat covers, and vehicle covers) are displayed on separate webpages from vehicle parts. Shock absorbers (or shocks) also are listed on a separate webpage from vehicle accessories, wheels, and arm rests, and under a general category "suspension" (generally shown by photo or by generic name e.g., "shocks" under "suspension"). None of these category lists associate brand names with the particular goods to show that Applicant's goods and certain goods of Registrant

emanate from the same source. See for example the following webpages shown below (Advance Auto Parts, Napa Auto Parts and Buy Auto Parts):<sup>13</sup>



<sup>13</sup> Sept. 28, 2021 Office action at TSDR 6, 13, 11; Mar. 11, 2022 Office action at TSDR 4. Where brand names may be shown on these images that include packaging, they are generally not discernable.

Add a vehicle

What part do you need today?

Shop All
Replacement Parts
Performance Parts
Accessories
Oil & Fluids
Special Offers
Speed Perks
Advice & How-Tos
Project Guides
FAQ / Help Desk
Store Locator
Or

## Wash & Wax Buyers Guide

Browse detailing products and read helpful articles.

Learn More

**Appearance**

- Air Fresheners
- Car Wash
- Cleaner and Polish
- Decals and Emblems
- Polishers, Buffers & Pads
- Protectant
- Sponge, Towel, and Chamois
- Tire and Wheel Cleaner
- Wax

**Paint and Body Repair**

- Coating & Under-Coating
- Door Handle & Parts
- Glass & Window Repair
- Headlight Restoration Kits
- Lifts, Latches & Handles
- Mirrors & Lights
- Paints & Enamels
- Touch-Up Liquids
- Trunk & Tailgate

**Interior and Exterior**

- Bug Guards and Shields
- Car Covers
- Cargo Liners & Mats
- Floor Mats
- License Plate Frames
- Mirrors
- Seat Covers
- Sun Shades & Shields
- Vent Visors

**Tools and Garage**

- Car Batteries
- Code Scanners
- Gloves
- Hand Tools
- Headlights/Tailights
- Jacks
- Specialty Tools
- Tire Repair
- Wiper Blades

**Top Accessory Brands**

 AUTOCRAFT	 GEAR WRENCH
 AUTOVENTSHADE	 MEGUIAR'S
 PERMATEX	 3M
 CURT	 RHINO GEAR

Add New Vehicle

Search product, brand, or part

6427 Iron Pt  
(Open now)

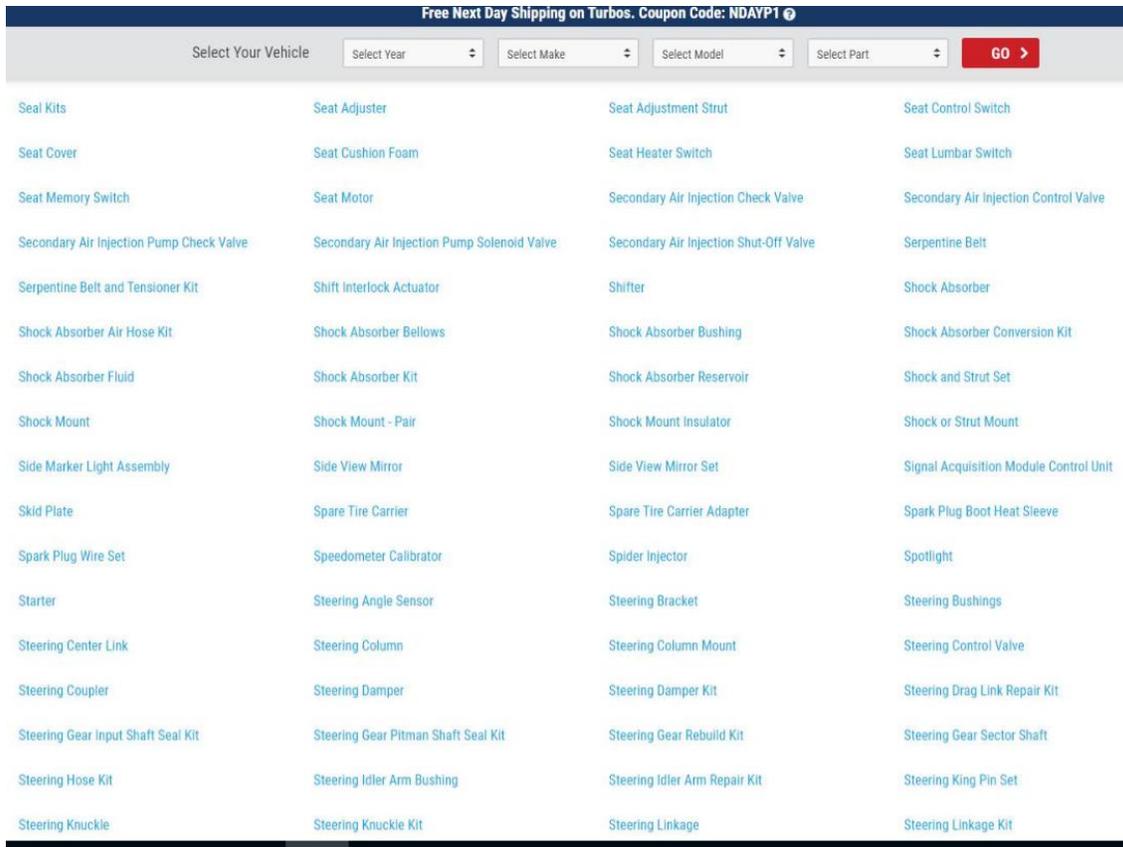
**Categories**

- Replacement Parts
- Air Brakes
- Alternators and Starters
- Batteries
- Bearings and Seats
- Belts, Hoses, Pulleys and Tensioners
- Brakes
- Climate Control
- Drivetrain
- Engine Heating and Cooling
- Engine Parts and Gaskets
- Exhaust
- Exterior Accessories
- Exterior Parts
- Filters
- Fuel and Emissions
- Gaskets and Seals
- Hybrid and EV
- Ignition and Engine Management
- Interior Accessories
- Interior Parts
- Lighting and Electrical
- Performance and Custom Accessories
- Performance Parts
- Steering and Suspension
- Tire, Wheels and Accessories
- Towing and Trailing
- Transmission
- Wipers and Windshield Products

**POPULAR CATEGORIES**

 Air Brakes	 Alternators and Starters	 Batteries	 Bearings and Seats
 Belts, Hoses, Pulleys and Tensioners	 Brakes	 Climate Control	 Drivetrain
 Engine Heating and Cooling	 Engine Parts and Gaskets	 Exhaust	 Exterior Accessories
 Wipers and Windshield Products	 Transmission	 Ignition and Engine Management	 Interior Accessories

- 22 -



We find the third-party webpages from the Sept. 28, 2021 and Mar. 11, 2022 Office actions do not show on their face that motor vehicle accessory manufacturers and motor vehicle parts manufacturers are the same. In fact, the preceding Advance Auto Parts webpages that list the names of popular manufacturers for parts, on one web page, and for motor vehicle accessories, on another web page, (Sep. 28, 2021 Office action at TSDR 11 and 13), support a finding that the manufacturers are not the same.

For webpages with actual product listings submitted by the Examining Attorney, we have the following:

- a Duralast loaded strut assembly on a separate webpage (Autozone, autozone.com) and a Monroe shock absorber (Advance Auto Parts,

advanceauto.com) on another webpage. Sept. 28, 2021 Office action at TSDR 10, 15.

- a TrueDrive strut assembly (CarParts.com). Mar. 11, 2022 Office action at TSDR 9.
- an Aftermarket shock and strut mount (CARiD, carid.com). Nov. 15, 2022 Denial of reconsideration at TSDR 3.

The Examining Attorney has not explained the relationship between the shock and strut mount and strut assembly to Applicant's shock absorbers nor explained how the shock and struck mount and strut assembly relate to Registrant's goods.

More importantly, none of these webpages show the same entity offering a shock and strut mount, strut assembly, or shock absorbers under the same brand name.

In the Nov. 15, 2022 Denial of reconsideration, the Examining Attorney also provided webpages from CARiD (carid.com at TSDR 2-3) showing actual product listings of various motor vehicle parts by the Aftermarket brand; however, none of these listings include shock absorbers. A separate webpage from CARiD (at TSDR 4) shows wheel covers by various manufacturers, none of which include the Aftermarket brand.

The Examining Attorney provided additional webpages in the Denial of reconsideration at TSDR 5-6 from JEGS (jeps.com) showing various vehicle parts by different producers, including JEGS' certified bell housing, brake hose kit, and forged yoke; a separate webpage shows wheels offered under the JEGS name. There are no webpages showing JEGS brand shock absorbers.

Lastly, the Examining Attorney provided in the Denial of reconsideration at TSDR 7-8 webpages from Parts Geek (partsgeek.com) showing KYB, Monroe, and Bilstein

shock absorbers on one page and Action Crash Parts arm rests on another webpage. None of these webpages show shock absorbers and arm rests under the same brand name.

We find no clear indication among the webpages in the record that consumers are exposed to the aftermarket shock absorbers and any of the following goods offered under the same mark: engines, structural parts for land vehicles, wheels for vehicles, alloy wheels, wheel covers, arm rests for vehicle seats, fitted car seat covers, covers for vehicle steering wheels, and fitted covers for vehicles. Simply, the webpage evidence gives no indication that the same companies that offer shock absorbers also offer these particular vehicle parts and vehicle accessories under the same name. Thus, on this record, we cannot find these goods related.

The Examining Attorney in her brief also references “structural parts for land vehicles” in the cited registration’s identification as evidence of relatedness on its face, asking us to read this good as encompassing aftermarket shock absorbers, and arguing that Applicant’s “shock absorbers” are legally identical to Registrant’s “structural parts.” But there is no evidence in the record that explains what structural parts for land vehicles are or what they consist of, nor is there evidence that shock absorbers are a structural part. Therefore, we find this assertion to be merely unsupported argument. *See Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”).

In sum, the record is insufficient to show the relatedness of Applicant's "aftermarket shock absorbers" to any of Registrant's goods and particularly, "engines," "structural parts for land vehicles," "wheels for vehicles," "alloy wheels," "wheel covers," "arm rests for vehicle seats," "auto accessories," "fitted car seat covers," "covers for vehicle steering wheels," and "fitted covers for vehicles," as specifically identified and argued by the Examining Attorney in her brief as related to Applicant's goods.

We find the second *DuPont* factor weighs against likelihood of confusion.

#### D. Similarity or Dissimilarity of the Trade Channels

The third *DuPont* factor considers "the similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 177 USPQ at 567. The basis for our analysis of trade channels is the identification of goods set forth in the application and cited registration. *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Applicant points out that its shock absorbers are identified as "aftermarket" parts and argues that Registrant is an original equipment manufacturer (OEM) and its parts and accessories in the registration are OEM. 6 TTABVUE 14. Applicant submits that "OEM and aftermarket parts travel through divergent trade channels." 6 TTABVUE 14. Applicant refers to the website articles it provided during examination that explain the difference between OEM and aftermarket parts and submits that this evidence shows the trade channels for Applicant's and Registrant's marks are different. 6 TTABVUE 14; Aug. 12, 2022 Request for Reconsideration 2-

37. These articles explain that OEM parts are sourced directly from the manufacturer and are direct replacements mostly bought from the automobile dealership (although it is possible to buy direct from the manufacturer), while aftermarket parts are less expensive and designed by aftermarket companies. Aug. 12, 2022 Request for reconsideration 6-9, 19. Applicant also points out that none of the auto parts store evidence submitted by the Examining Attorney shows parts and accessories for sale from Registrant Jaguar Land Rover, making the evidence “less persuasive in this context.” 6 TTABVUE 14. Applicant argues that the Examining Attorney is unable to overcome this evidence showing the different trade channels and that none of the website evidence shows the offering of OEM parts by these automotive parts retailers. 9 TTABVUE 4. Applicant also argues that the Examining Attorney did not submit any evidence nor does she refute that Registrant is an OEM.<sup>14</sup> 9 TTABVUE 4.

However, our consideration of trade channels is not based on alleged “real-world conditions” but based on the identifications. *See Stone Lion*, 110 USPQ2d at 1162 (“It was proper, however, for the Board to focus on the application and registrations rather than on real-world conditions, because ‘the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application.’” (quoting *Octocom Sys.*, 16 USPQ2d 1787 (“The authority is legion

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<sup>14</sup> We note that some of the webpages submitted by the Examining Attorney show product listings for goods identified as “OE” parts, but these parts are branded with the parts manufacturer’s name, not the vehicle manufacturer’s name as an OEM part would be. *See e.g.*, Nov. 15, 2022 Denial of reconsideration at TSDR 7 which lists a GENUINE brand OE shock absorber described as “OEM quality” for a Lexus GX470, not branded with the Lexus name, and a BILSTEEN shock absorber for a 1997-2006 Jaguar XK8 listed as an “OE replacement” with “high OEM quality standards,” not branded with the Jaguar name.

that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”))). As the Examining Attorney points out, there are no restrictions to trade channels for Registrant's goods; therefore, Registrant's goods are not limited to trade channels for OEM parts or OEM accessories.<sup>15</sup>

Even if we read Applicant's aftermarket shock absorbers as excluding automobile dealerships as a distribution channel, the identification is otherwise unlimited as to other wholesale and retail distribution channels so that such a limitation is not meaningful *See Bd. of Regents, Univ. of Tex. Sys.*, 110 USPQ2d at 1190-93 (finding that although opposer's clothing items were limited by the wording “college imprinted” and applicant's identical or highly similar items were limited by the wording “professional baseball imprinted,” these restrictions did not distinguish the goods, their trade channels, or their relevant consumers in any meaningful way).

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<sup>15</sup> Applicant does have a restriction as to nature, i.e., “aftermarket,” which restriction, based on the evidence of record, could also be read as a trade channel limitation to the extent that aftermarket shock absorbers would not be offered by a vehicle dealership; but otherwise Applicant's aftermarket shock absorbers would be offered in all other trade channels for goods of this type, such as wholesale and retail. *See Bd. of Regents, Univ. of Tex. Sys. v. S. Ill. Miners, LLC*, 110 USPQ2d 1182, 1190-93 (TTAB 2014) (finding that opposer's clothing items were limited by the wording “college imprinted” and applicant's clothing items were limited by the wording “professional baseball imprinted”).

Other than the exclusion of motorcycle parts, there are no restrictions or limitations applied to Registrant's identified goods. Even if we could infer from the identification that Registrant is an OEM based on the listed motor vehicle, it would be impermissible to limit the scope of the registration as to the other goods listed in the identification.

Because the goods of Applicant and Registrant have no meaningful restrictions or limitations as to channels of trade or classes of purchasers, we presume that the goods will be marketed in all normal trade channels and to all normal classes of purchasers for such goods. *See Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1357 (Fed. Cir. 2000) (“When the registration does not contain limitations describing a particular channel of trade or class of customer, the goods or services are assumed to travel in all normal channels of trade.”). Here, the consumer for Applicant’s goods are vehicle mechanics or the general consumer who seeks to replace shock absorbers in their motor vehicle; the consumer for Registrant’s goods are individuals who are interested in purchasing a motor vehicle and related interior and exterior vehicle accessories and vehicle parts, or mechanics in need of parts for a motor vehicle.

The Examining Attorney argues that the website evidence demonstrates that Applicant’s and Registrant’s goods are offered in the same trade channels. 8 TTABVUE 9. The website evidence from Napa Auto Parts, AutoZone, Advanced Auto Parts, Carid, BAP Buy Auto Parts, CarParts.com, Parts Geek, and JEGS shows that automotive stores and parts suppliers offer motor vehicle accessories and replacement parts such as shock absorbers on the same websites, albeit different web pages. Sept. 28, 2021 Office action at TSDR 2-15; Mar. 11, 2022 Office action at TSDR 2-9.

We find this evidence is sufficient to show trade channel overlap. *See e.g., In re Joel Embiid*, 2021 USPQ2d 577, at \*31 (TTAB 2021) (evidence showing that shoes

and shirts are sold together on the websites of clothing companies supports a finding of related trade channels). The third *DuPont* factor weighs in favor of likelihood of confusion.

#### E. Conditions of Sale

The fourth *DuPont* factor considers the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs careful, sophisticated purchasing,” *DuPont*, 177 USPQ at 567. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005). When the relevant consumers include both professionals and members of the general public, the standard of care for purchasing the goods is that of the least sophisticated purchaser. *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004). *See also Stone Lion*, 110 USPQ2d at 1163-64 (recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”).

Applicant argues that “automobiles and engines are very expensive items and custom wheels cannot be characterized as inexpensive general consumer items” and “changing shock absorbers is not an activity typically performed by the average consumer.” 6 TTABVUE 15. Applicant submits that the purchase of shock absorbers requires “careful evaluation of vehicle specifications, and oftentimes requires help from specialized vehicle mechanics” raising the standard of care to “the standard of the ‘discriminating purchaser.’” 6 TTABVUE 15. The Examining Attorney argues

that a less discerning consumer (composed of professionals and the general public) could be confused and that even sophisticated consumers are not immune from source confusion. 8 TTABVUE 16.

Applicant's evidence does show that OEM and aftermarket parts do require consideration by the purchaser because of differences in price, compatibility and fit, quality, and warranty, but Registrant's goods are not restricted to OEM parts. Although Applicant's goods are limited to aftermarket parts, neither Applicant nor Registrant's goods are limited by price or consumer. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d at 1195 ("where, as here, the goods are identified without any limitations as to trade channels, classes of consumers, or conditions of sale, we must presume that Applicant's and Registrant's wine encompasses inexpensive or moderately-priced wine"); *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("because neither Applicant nor Registrant has limited its products to any particular style, type of consumer, or price point, we must assume that both identifications include 'residential and commercial furniture' of all types, styles, and price levels offered to the full range of usual consumers for such goods."); *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (evidence that relevant goods are expensive wines sold to discriminating purchasers must be disregarded given the absence of any such restrictions in the application or registration).

Nonetheless, we agree that the motor vehicles identified in Registrant's identification are not an impulse purchase nor are some of the other goods listed e.g., (engines, structural parts for land vehicles, wheels, seats for vehicles, electronic

interface panels sold as an integral component of land vehicles; diagnostic apparatus consisting of sensors for use in testing vehicle function and in diagnosing vehicle electrical and mechanical problems sold as an integral component of land vehicles) as well as Applicant's shock absorbers. These goods require some degree of purchaser care and understanding of specifications to fit the vehicle, as well as consideration of compatibility, quality, durability and warranty. On the other hand, some of Registrant's goods such as side mirror protective and vanity covers, fitted car seat covers, covers for vehicle steering wheels, and fitted covers for vehicles may not require purchaser care and could be purchased on impulse.

Therefore, we find this *DuPont* factor neutral.

## II. Conclusion

The first and third *DuPont* factors weigh in favor of likelihood of confusion. The second *DuPont* factor weighs against likelihood of confusion, and the fourth *DuPont* factor is neutral.

In the likelihood of confusion analysis, any of the *DuPont* factors may play a dominant role. *DuPont*, 177 USPQ at 567. In some cases, a single factor may be dispositive. *See Kellogg Co. v. Pack'em Enters., Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) ("we know of no reason why, in a particular case, a single *du Pont* factor may not be dispositive"). In the present *ex parte* appeal, the lack of evidence showing a relationship between the goods outweighs the similarity of the marks and overlapping trade channels and renders confusion unlikely. *See In re Mars, Inc.*, 741 F.2d 395, 222 USPQ 938, 938 (Fed. Cir. 1984) (Board reversed on

finding of likelihood of confusion between CANYON for candy bars and CANYON for fresh fruit because there was no evidence in the record showing the relatedness of the goods, making the Board's conclusion of relatedness merely "a matter of opinion.").

**Decision:** The refusal to register Applicant's mark X-LANDER is reversed.